

## **CHAPTER 28-23**

### **SALES UNDER EXECUTION**

**28-23-01. Sale of personal property - Notice of sale.** The officer who levies upon personal property, other than crops or perishable property, by virtue of an execution, before the officer proceeds to sell the same, shall cause public notice to be given of the time and place of such sale by advertisement published once each week for two successive weeks next before the day of sale, in some newspaper printed in the county, such newspaper to be designated by the judgment creditor or the judgment creditor's attorney, or, in case no newspaper is published therein, by posting advertisements in five public places in the county.

**28-23-02. Sale of crops.** If the levy is upon crops, when harvested, such crops, at the option of the judgment creditor, may be sold in the nearest usual market therefor, at any time, after such levy, in the usual manner, at the market price thereof in such market and without publishing or posting notice of sale. In that case, however, the notice of levy, or a subsequent notice to be served as the notice of levy is served, must state where and when such crops will be sold. Should the judgment debtor, or the judgment debtor's agent or attorney, at the time such levy is made, give notice to the officer making the levy that the judgment debtor intends to settle the judgment, the officer shall hold the grain six days before making sale thereof. The usual and reasonable charges for the sale and transportation of such grain to market must be deemed proper expenses chargeable as costs in such proceedings, and in case the notice above provided for is served on the officer there also must be chargeable reasonable charges for storing said grain.

**28-23-03. Perishable property.** Perishable property may be sold pursuant to the order of the court, prescribing such notice, time, and manner of sale as may be reasonable, considering the character and condition of the property.

**28-23-04. Sale of real property - Notice of sale - Contents.** Before any real property or interest therein taken on execution may be sold, the officer making the sale shall give public notice of the time and place of the sale:

1. If a newspaper is printed in the county where the real property to be sold is situated, the notice must be given by advertisement in a newspaper printed in the county once a week for three successive weeks, the last publication to be at least ten days prior to the making of the sale; and
2. In case no newspaper is printed in the county, then the officer making the sale shall cause the advertisement to be made by posting a copy of the advertisement on the outer door of the courthouse or building where the district court of the county was last held, and in five other public places in the county.

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

**28-23-05. Where sale of real property made.** All sales of real property, or any interest therein, under execution, must be held at the courthouse, if there is one in the county in which such real property is situated, and if there is no courthouse, then at the door of the house in which the district court was last held, and if there is no courthouse and no district court has been held in the county, then at such place within the county as the sheriff shall designate in the sheriff's notice of sale.

**28-23-06. Place of sale of personal property.** If the owner of the personal property levied on, other than crops, agrees to keep such property safely until the day of sale and requests that the sale be held on the premises where the property is seized, the sale must be held on the premises where the property is seized. Otherwise the sale may be had at the place designated by the sheriff in the notice of sale. This provision also applies in case of foreclosure by advertisement.

**28-23-07. Time and manner of sale.** All sales of property under execution must be made at public auction to the highest bidder, between the hours of nine a.m. and four p.m. After sufficient property has been sold to satisfy the execution, no more may be sold. No sheriff or other officer, nor a sheriff's or officer's deputy, holding the execution or making the sale of property, either personal or real, may become a purchaser or be interested directly or indirectly in any purchase at such sale, and every purchase so made must be considered fraudulent and void. When the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in such parcels as are likely to bring the highest price, and when the sale is of real property consisting of several known lots or parcels they must be sold separately. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, must be sold, when such property consists of several known lots or parcels or of articles which can be sold to advantage separately, and the sheriff or other officer shall follow such directions.

**28-23-08. Postponements.** When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale of any real or personal property upon execution or upon the foreclosure of a mortgage or other lien is prevented from taking place on the day fixed, the sheriff, or person making the same, may postpone the sale for not more than three days without being required to give any further notice thereof, but the sheriff or person may not make more than two such postponements, and such postponements must be publicly announced when and where the sale should have taken place. Such sale may be postponed for a longer period than three days by continuing the publication of the original notice of sale together with notice of such postponement, specifying the time and place at which such postponed sale will be made.

**28-23-09. Surplus paid judgment debtor.** When the property sells for more than the amount required to be collected, the surplus must be paid to the judgment debtor, unless the officer has another execution in the officer's hands on which the surplus rightfully may be applied.

**28-23-10. Sale after ninety days - Abandonment of levy.** In case of the failure of the sale by reason of irregularities in giving notice thereof, or of its postponement, the property may be sold upon proper notice by virtue of the execution after the expiration of the ninety days allowed for the return thereof, and the officer in the officer's return shall set forth the facts regarding such failure or postponement, or the judgment creditor, in writing filed with the clerk, may abandon such levy upon paying the costs thereof, in which case execution may issue with the same effect as if none had been issued.

**28-23-11. Purchaser's right - Sheriff's certificate.** Upon a sale of real property, the purchaser is substituted for the judgment debtor and acquires all the right, title, interest, and claim of such debtor to such property, and when the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the real property is subject to redemption as provided in this title. The officer shall give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold;
2. A statement of the price bid for each distinct lot or parcel;
3. A statement of the whole price paid; and
4. When subject to redemption, a statement to that effect.

Such certificate must be executed by the officer and acknowledged or proved as may be required by law for deeds of real property.

**28-23-12. Recording of sheriff's certificate required - Evidence.** The sheriff's certificate of sale must be recorded in the office of the recorder of the county wherein the real property is situated, within sixty days from the date of sale. Such sheriff's certificate or a certified copy thereof certified by such recorder must be taken and deemed evidence of the facts therein recited and contained.

**28-23-13. Proceedings upon confirmation.** If the court, upon the return of any execution for the satisfaction of which any real property or interest therein has been sold, after having carefully examined the proceedings of the officer, is satisfied that the sale has been made in all respects in conformity to the provisions of this chapter, the court shall make an order confirming the sale and directing the clerk to make an entry on the journal that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed of such real property, or interest therein, at the expiration of one year from the day of sale unless the same is redeemed. The officer after making such sale may retain the purchase money in the officer's hands until the court has examined the officer's proceedings as aforesaid, when the officer shall pay the same to the person entitled thereto by order of the court.

**28-23-14. Reversal does not defeat sale.** If any judgment, in satisfaction of which any real property is sold, is reversed at any time thereafter, such reversal does not defeat nor affect the title of the purchaser, but in such case, restitution must be made by the judgment creditor of the money for which such real property was sold, with legal interest thereon from the day of sale.